



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: GHE HealthCare, Inc.

File: B-284786

Date: June 6, 2000

William H. Miller for the protester.

Robert E. Richardson, Jr., Esq., for Sherman Psychological Services, an intervenor.
Merilee D. Rosenberg, Esq., Philip Kauffman, Esq., and Phillipa L. Anderson, Esq.,
Department of Veterans Affairs, for the agency.

Jacqueline Maeder, Esq. and Paul Lieberman, Esq., participated in the preparation of
the decision.

DIGEST

1. Protest that agency improperly evaluated proposals is denied where the record shows that the evaluation was reasonable and consistent with the stated evaluation factors.
2. Agency determination to award to offeror whose proposal reflected overall technical superiority at a slightly higher price than protester is unobjectionable where solicitation provided that technical considerations were more important than price, and the agency reasonably concluded that the proposal's technical superiority warranted the extra associated cost.

DECISION

GHE HealthCare, Inc. (GHE) protests the award of a contract to Sherman Psychological Services (Sherman) under request for proposals (RFP) No. 549-7-2000, issued by the Department of Veterans Affairs (VA), Medical Center Dallas, Texas, as a small business set-aside for readjustment counseling services. GHE argues principally that it should have received the award because of its lower price and that Sherman's proposal was improperly evaluated. The protester also asserts that the agency failed to provide notice that one of the protester's current employees represented its competition.

We deny the protest.

The solicitation, issued on August 26, 1999, contemplated the award of a fixed-price contract for a base year with two 1-year options to provide readjustment counseling services to eligible veteran beneficiaries in Lamar and Grayson counties, Texas. RFP Part II-2, at 6. Offerors were required either to have “a physically handicapped accessible outreach/counseling facility located in the counties of Texas for which services are being offered or be able to furnish required services through referral agreement, affiliation, or consultant arrangements through a licensed or qualified provider” in the relevant area. RFP Part II-4, at 8.

Proposals were to be submitted in 14 separate parts, and the RFP provided guidelines as to what information was to be presented in each of these parts. Part 1 was to contain each offeror’s completed standard form (SF) 1449 and required certifications; parts 2 through 9 were to address the offeror’s method of satisfying the agency’s minimum needs; and, parts 10 through 14 were to contain information concerning the offeror’s method of addressing specified additional evaluation criteria. RFP Part IV-3, at 29. The RFP advised that proposals would be evaluated and point-scored on the minimum needs factors (parts 2 through 9) and on the additional criteria (factors 10 through 14). RFP Part V-1, at 33. The agency’s minimum needs included, among other things, a specified core staff and facility description, under which the offeror was required to demonstrate that it had at least one psychiatrist or doctoral level psychologist or master of social work level psychiatric social worker on its staff. If the offeror could not provide one of the counselors listed above, it was required to have a mental health-related masters level counselor, and have a psychiatrist, doctoral clinical psychologist, psychiatric social worker or psychiatric clinical nurse specialist serving as a consultant on call during regular working hours to perform services and/or be immediately accessible for consultation. RFP Part IV-3, at 30.

The solicitation provides that the government “will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered,” RFP Part V-1, at 33, and advised offerors that the VA intended to award a contract without discussions. RFP Part IV-1(g), at 26. Offerors were required to provide a per-session rate for the clinician who would perform the services for individual therapy, group therapy and couple/family therapy sessions, RFP Part 1, at 2, and the solicitation provided that for award purposes, the agency would add the total price for all options to the total price for the basic requirement. RFP Part V-1(b), at 33. Price was to be point-scored and was equal in weight to the minimum needs factors. RFP Part V-1(a), at 33.

Three proposals were received, including those of GHE and Sherman, by the September 20, 1999 closing date. After reviewing the proposals, the contracting officer eliminated one proposal from further consideration for failure to satisfy a mandatory solicitation requirement. Agency Report at 2. Additionally, the contracting officer noted that the two remaining offerors had both proposed the same psychologist as principal counselor in their proposals. The proposed

psychologist was currently serving as the principal counselor for GHE, providing readjustment counseling services under GHE's contract with the VA, but GHE did not include with its proposal any statement or document confirming that the psychologist intended to continue his employment with GHE. Agency Report at 2. Indeed, the psychologist had himself signed and submitted the other proposal on behalf of Sherman. On September 30, the contracting officer contacted GHE to request that GHE extend the current contract for 3 months. The contracting officer did not disclose that GHE's psychologist had submitted a proposal on his own behalf. Agency Report, exh. 1, Contracting Officer's Statement, at 1. Subsequently, by letter dated November 5, the contracting officer requested that GHE clarify whether the psychologist was under formal contract with GHE. The contracting officer explained to the protester that the agency needed the information because the psychologist had submitted his own proposal in response to the solicitation. The contracting officer asked that GHE provide the agency with a copy of a signed contract if the psychologist was under formal contract with GHE. Agency Report, exh. 3, Letter from Contracting Officer to GHE 1 (Nov. 5, 1999).

By letter dated November 17, GHE responded that it had received a letter from the psychologist's attorney regarding the psychologist's 1994 contract with GHE advising that the contract was no longer valid and that the psychologist could compete with GHE. GHE stated that it reluctantly accepted the attorney's position, did not challenge the psychologist's decision to compete for the contract, and withdrew the psychologist's name from GHE's proposal. Agency Report, exh. 4, Letter from GHE to Contracting Officer 1 (Nov. 17, 1999). GHE asked if it could revise its proposal sometime during the next 30 days to name a new psychologist, and make various other changes. Id. at 1-2. GHE also accepted the 3-month contract extension and asked if it could substitute another counselor for the psychologist to finish the counseling work under the extension. Id. at 1.

The contracting officer determined not to allow GHE to revise its proposal but never specifically denied GHE's requests.¹ Agency Report, exh. 1, Contracting Officer's Statement, at 2. Agency personnel evaluated the proposals and assigned a point score for each of the evaluation factors and price. The maximum possible score was 825, including 330 points for minimum needs, 165 for the additional criteria, and 330 for price. Agency Report, exh. 8, Evaluation Summary, at 6-7. GHE's proposal received a total technical score of 381.6 and, because it was the low offer, a price score of 330 for a total score of 711.6. Id. Sherman's proposal received a total technical score of 440 and a price score of 310.2 for a total of 750.2. Id. GHE's proposal was downgraded under the experience factor because its proposed

¹ The agency determined not to allow GHE to revise its proposal because it did not want to conduct discussions; it viewed the exchange of information regarding the psychologist as a clarification. Subsequently, the award decision was made without the conduct of any discussions, as provided for by the RFP.

counselors had limited experience in the treatment of Vietnam-era and/or post-Vietnam war zone veterans. Id. at 8-9. GHE's proposal was also downgraded because it failed to adequately address its continuing education plans. Id. at 9. Both GHE's and Sherman's proposals were downgraded because the offerors failed to provide documentation of specific or formal training for counseling Vietnam-era or post-Vietnam war zone veterans and because they failed to document the veteran status of their proposed counselors. Id. Both offerors received the maximum point score under the other factors. The contracting officer determined that Sherman's proposal was the most advantageous to the government based on technical factors and price. Id. The agency notified GHE that it had not been selected for award and GHE filed this protest with our Office.

GHE protests that it offered the low price and, because its proposal is the more cost effective to the government, it should have been awarded the contract. Protester's Comments at 1. GHE contends that Sherman's proposal should have been downgraded because Sherman did not propose a back-up counselor and has only one facility. Id. at 2. GHE notes that it has a facility in each of the counties to be served and that it offered more than one counselor; therefore, it asserts, the two proposals should not have received identical ratings on the core staff and facility factor. Id. GHE also contends that the agency improperly failed to notify it in September that GHE's own psychologist/principal counselor was competing against GHE under the solicitation and improperly failed to respond to its question concerning a replacement counselor under its current contract. Id. at 2. The protester argues that if it had learned of the conflict in September or if the agency had responded to its question about replacing the psychologist during the contract extension period, its other counselors would have had the opportunity to acquire additional experience in counseling Vietnam-era veterans which then would have improved GHE's score under the experience factor.² Id.

The evaluation of technical proposals is a matter within the contracting agency's discretion since the agency is responsible for defining its needs and the best method of accommodating them. Loral Sys. Co., B-270755, Apr. 17, 1996, 96-1 CPD ¶ 241 at 5. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but will examine the record of the evaluation to ensure that it was reasonable and in accordance with stated evaluation criteria and not in violation of applicable procurement statutes and regulations. Id. Mere disagreement with the agency's

² In its protest, GHE also challenged the agency's failure to respond to its request to revise its proposal and alleged that Sherman had a "significant contract advantage" over GHE because of the experience of GHE's primary counselor. Protest at 3. The protester, however, failed to pursue these contentions in its comments in response to the agency's explanation of its actions; we therefore consider them abandoned. See Applied Cos., B-279811, July 24, 1998, 98-2 CPD ¶ 52 at 5 n.5.

evaluation does not render the evaluation unreasonable. Davies Rail and Mechanical Works, Inc., B-278260.2, Feb. 25, 1998, 98-1 CPD ¶ 134 at 5. Where, as here, the RFP provides that award will be made on the basis of the most advantageous offer, there is no requirement that award be made on the basis of low price. JSA Healthcare Corp., B-252724, July 26, 1993, 93-2 CPD ¶ 54 at 6. A procuring agency has the discretion to select a more highly rated technical proposal if doing so is reasonable and consistent with the evaluation methodology set forth in the RFP, and award to a higher rated offeror with higher proposed costs can be justified where the technical superiority of the selected offeror's proposal outweighs the price premium. Id.

Here, the RFP provided that the technical proposal would be considered more important than price and the agency found the awardee's proposal technically superior to the protester's proposal. GHE's contention that Sherman's proposal was improperly evaluated because Sherman has only one facility and proposed only one counselor is without merit. The solicitation required that offerors have a handicapped-accessible facility in one of the counties to be served. RFP Part II-4, at 8. As to the number of counselors, the solicitation stated that each offeror was to have at least one psychiatrist or doctoral level psychologist or masters in social work level psychiatric social worker. If none of these counselors were available, the offeror could propose a masters level counselor with a consultant on call. RFP Part IV-3, at 30.

In its proposal, Sherman specifically stated that it had a handicapped-accessible facility in Grayson county. Additionally, Sherman named a doctoral level psychologist as its principal counselor and proposed another doctoral level psychologist as a back-up counselor. Vitae for both counselors were included in Sherman's proposal. Thus, since Sherman's proposal satisfied the mandatory solicitation requirements, consistent with the evaluation criteria, the agency reasonably awarded Sherman's proposal the total available points under the core staff and facility factor. GHE's disagreement with this evaluation does not make it unreasonable. Davies Rail and Mechanical Works, Inc., *supra*. As to the protester's position that its low price should be dispositive, this was a procurement in which technical considerations were more important than price, and in light of the technical superiority of the awardee's proposal and the relatively small price difference, VA's determination that Sherman's technical superiority outweighed the associated price difference is unobjectionable.

GHE's objection that the VA did not timely inform GHE that its current psychologist was competing for the award is essentially an allegation that the agency somehow permitted the awardee to obtain an unfair competitive advantage. However, GHE has cited no support for its contention that the VA had a duty to immediately disclose the identity of its competition. In fact, on the contrary, the Federal Acquisition Regulation (FAR) instructs agencies to safeguard such source selection information contained in proposals before a contract award is made. FAR § 15.207; Lederle-Praxis Biologicals, B-255996, B-255996.2, Apr. 25, 1994, 94-1 CPD ¶ 277 at 6. Finally, regarding the protester's contention that the agency improperly failed to

permit GHE to replace its primary counselor during the 3-month contract extension period, which might have resulted in an improved proposal score under the experience factor, to the extent that this encompasses anything beyond a matter of contract administration, the protester has not cited any legal basis, nor are we aware of any, which would require the agency to permit such a substitution.

The protest is denied.

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